



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CIVIL REVISION APPLICATION NO.55 OF 2024

1. President,
Borvahir Vidya Prasarak Sanstha,
Borvahir, Tq. & Dist. Dhule
Sitaram Fakira Patil,
Age : 83 years, Occu.: Agri.,
R/o. Borvahir, Tq. & Dist. Dhule
2. Secretary
Borvahir Vidya Prasarak Sanstha,
Borvahir, Tq. & Dist. Dhule
Prakash Bhagwan Sonawane,
Age : 55 years, Occu.: Service/Agri.,
R/o. Borvahir, Tq. & Dist. Dhule

Applicants

VERSUS

Bharat Murlidhar Patil (Sonawane),
Age : 61 years, Occu.: Agri.,
R/o. Borvahir, Tq. & Dist. Dhule

Respondent

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Advocate for the Petitioner : Mr. P. D. Bachate a/w Adv. A. D. Khot

Advocate for Respondent : Mr. A. S. Sawant.

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CORAM : S. G. CHAPALGAONKAR, J.

Reserved on : January 21, 2025

Pronounced on : February 06, 2025.

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ORDER :-

1. The applicants impugns the order dated

05.02.2024 passed by Civil Judge Senior Division, Dhule below Exhibit-19 in Regular Civil Suit No.105 of 2021. (Hereinafter parties are referred to as per their original status in the suit).

2. The applicants are defendants in Regular Civil Suit no.105 of 2021 instituted by respondent No.1/plaintiff seeking the relief of declaration that the order dated 19.04.2021 cancelling his life membership of Trust is illegal and further directions to continue membership as a Trustee. It is contention of the plaintiff that he is a life member of Borvihir Vidya Prasarak Sanstha Taluka and District Dhule (for short hereinafter referred to as the 'Trust'), which has been registered as trust vide registration No.E/49. However, due to dispute amongst members of the trust, two groups are filing independent change reports. However, since the year 2013, none of the change report has been approved and change reports are still pending adjudication. The applicant being life member of the Trust, filed application seeking intervention under Section 23-A of Maharashtra Public Trust Act, 1950 (for short Act of 1950). Being enraged by the aforesaid action on

the part of the plaintiff, defendant nos.1 and 2 issued show cause notice dated 17.03.2021 as to why his life membership shall not be cancelled and he shall not be dismissed from the membership. Eventually, on 19.04.2021 plaintiff has been served with a communication informing that he has been removed from membership of the Trust.

3. According to plaintiffs, such an action on the part of defendants is *ultra-vires* / illegal. The defendants have no authority under constitution of Trust to cancel the membership or remove life member of Trust.

4. The applicants/defendants caused appearance in the suit and filed an application below Exhibit 19 under Order VII Rule 11 of Civil Procedure Code, seeking rejection of plaint on the ground that suit falls within purview of Section 50 and 51 of the Act of 1950. The plaintiff failed to obtain permission of Charity Commissioner under Section 51 of the Act before instituting suit. Further, only District Court would have jurisdiction to entertain the suit. The Civil Court lacks jurisdiction to entertain the suit. The Trial Court rejected application holding that withdrawal of life membership of

plaintiff being personal right, which he seeks to enforce, does not fall under Section 50 of the Act. The suit is beyond ambit and scope of Section 50 and 51 of the Act of 1950.

5. The aggrieved defendants filed this Civil Revision Application assailing the order of the Trial Court passed below Exhibit 19.

6. Mr. P.D.Bachate, learned Advocate appearing for the applicant would submit that Section 50 of Act of 1950 deals with the suits by or against or relating to public trusts or trustees or others and provides that for obtaining the decree as to the reliefs specified therein, consent of the Charity Commissioner as provided under Section 51 is necessary. He would submit that as per Clause (iv) of Section 50, where any declaration or an injunction in favour of or against a public trust or trustee or trustees or beneficiary thereof is filed, particularly for the reliefs contemplated under Clause (p) i.e. declaration or denying any right in favour of or against the public trust or trustee or trustees or beneficiaries thereof and issue injunction in appropriate cases. Consent of Charity Commissioner is mandatory. He would therefore urge that the

present suit would not be maintainable in absence of consent of the Charity Commissioner.

7. Mr. Bachate would further submit that Section 80 of the Act of 1950 bars jurisdiction of the Civil Court to decide or deal with any question required to be decided by any Officer or authority under this Act. Therefore, the suit for the reliefs as claimed by the petitioners is expressly barred.

8. Mr. Bachate in support of his contentions relies upon judgment of this Court in case of **Social and Cultural Association Vs. State of Maharashtra reported in 2014 (4) Mh.L.J 174** to contend that the declaration relating to any right in favour or against trustees is covered under the provision of Section 50 and such right cannot be termed as individual right. Mr. Bachate would further submit that although in subsequent judgment in case of **Vidarbha Youth Welfare Society Amravati and others Vs. Sandip Ram Meghe and others** reported in **2016 (5), Mh.L.J, no.711** this Court has taken different view, it is in the context of Temple Trust and not the Trust similar to the present one. He would therefore urge that the law laid down by this Court in case of

Social and Cultural Association (supra) would govern present proceeding. Mr. Bachate would further endeavour to contend that in the wake of earlier judgment in case of Social and Cultural Association, the subsequent decision by co-ordinate Bench could not have taken different view, if the subsequent Bench was not agreeable to earlier view, instead, matter could have been referred to the Larger Bench recording dissent. He would further urge to refer the issue to the Larger Bench so as to set-right divergent views expressed by Co-ordinate Benches of this Court.

9. Per contra, Mr. A. S. Sawant, learned Advocate appearing for sole respondent/plaintiff supports the impugned order contending that all issues sought to be raised in this Civil Revision Application are elaborately considered and decided by this Court in case of Vidarbha Youth Welfare Society. He would further submit that the earlier judgment in case of Social and Cultural Association is also referred to in case of Vidarbha Youth Welfare Society and after referring to the law laid down by Supreme Court in earlier decisions, this Court held that the suit challenging dismemberment of life

members can be examined by Civil Court without fettered by the provisions contained under Section 50 and 51 of the Act of 1950.

10. Having considered submissions advanced, the issue arises for consideration in this matter is as to whether the suit instituted by the Respondent is barred by law, particularly, in light of Section 80 of the Bombay Public Trusts Act.

Perusal of plaint in R.C.S. No.105 of 2021 depicts that plaintiff is a life member of the Trust. On 17.3.2021 plaintiff was served with show cause notice by the defendants i.e. the President and Secretary of the Trust as to why he should not be removed from Life Membership of the Trust and lastly vide communication dated 19.4.2021 decision regarding removal of plaintiff from life membership has been informed to him. The prayer clause shows that plaintiff seeks declaration that order dated 19.4.2021 regarding removal/cancellation of his membership is illegal and seeks further direction against the defendants to not to prohibit him from acting as a life member of the Trust.

11. Apparently, the very similar issue has been considered and dealt with by this Court in case of Vidarbha Youth Welfare Society, Amravati and others Vs. Sandip Ram Meghe and others. This Court referring to the decision of the Supreme Court of India in case of **Vinayak Dev Idagunji and others Vs. Shivram reported in (2005) 6 SCC 641** observed that the provisions of section 50 and 51 of the Act would apply if the matter pertains to administration of the Public Trust. However, if the suit is filed ascertaining individual right of the person claiming infringement of such personal right, he would be entitled to maintain a suit in the Civil Court. In the present case, Mr. Bachate seeks to rely upon sub-clause (iv) of Section 4 to contend that present suit would fall under the said clause. However, such contention cannot be accepted. The aforesaid clause cannot be read in isolation. It has to be read in consonance with the object of legislation. The provisions contained under section 50, 51 of the Act of 1950 so also section 80 is brought into the Statute Book to regulate and protect actions pertaining to administration of the Trust. In the present case, the plaintiff is not seeking any relief as to the administration of the Trust, but seeks to protect his individual

right to continue as a life Member of the Trust.

12. In case of Vidarbha Youth Welfare Society(*supra*), this Court has given one more reason in favour of jurisdiction of the civil court to entertain the suit filed by the Member of the Trust assailing his removal that the relief claimed in the suit does not pertain to change in the name of trustees or managers. The dis-membership of plaintiff from life membership does not constitute change within the meaning of section 22 of the Act. This Court further observed that filing of a change report for adjudicating whether removal of the life membership from the Trust is not at all contemplated under the Scheme of the Act and there would be no occasion to decide or deal with that question. It is further observed that such question may fall for consideration as ancillary issue in the change report. However, the plaintiff cannot be asked to wait ad-indefinitum.

13. This Court is, therefore, of the opinion that the controversy posed in this Revision Application is already settled and need not be revisited. Although, Mr. Bachate, relying upon the observations of the Supreme Court in case of

State of **Tamilnadu Vs. Hemendhra Reddy and anr.** **reported in 2023 ALLMR (Cri) 3489 (S.C.)** submit that the view taken by this Court in earlier judgment in case of Social and Cultural Association could not have been disturbed in subsequent judgment delivered by the Co-ordinate Bench and the same could have referred to the Larger Bench. The fact remains that the law laid down in case of Vidarbha Youth Welfare Society is based on the observations of the Supreme Court as well as the Division Bench of this Court and the same holds the field since 2016. This Court has no hesitation to follow the same. Trial Court has rightly considered the factual and legal aspects in the matter and rendered its decision, which is impugned in this Civil Revision Application.

14. In that view of the matter, I do not find any merit in this Civil Revision Application. The same is **dismissed**.

(S. G. CHAPALGAONKAR, J.)

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